MISCELLANY.

VIRGINIA BOARD OF LAW EXAMINERS.

Richmond, Va., November 2, 1910.

Questions.

1. Missouri, just after the Civil War, passed an act requiring any one to take an oath that he had not participated in, or sympathized with, the rebellion, before he could be allowed to hold office or practice certain professions.

Was the act valid? Why?

2. A State passes an act materially altering, without the consent, of the college authorities, a charter granted by the British Crown to the college before the Revolution.

Was the act valid? Why?

3. Give at least two instances in which the United States Supreme Court has original (as distinguished from appellate) jurisdiction.

4. A State enacts that no freight train shall be run on any railroad in that State on Sunday, except in a few specified cases. Assuming that there is no congressional legislation on the subject, is the State law valid? Why?

5. A defendant sued in a State Court on a debt suggests bankruptcy, and prays the State Court to stay proceedings till his right to a discharge is acted upon by the Federal Court, in which he has instituted bankruptcy proceedings. The State Court refuses his application and renders final judgment against him.

What, if any, is his remedy?

6. Your client wishes to leave $30,000 as a permanent endowment for the Monumental Episcopal Church in Richmond.

Can he do so? If so, how?

7. State briefly the rule in Shelley's case as it existed at common law, and give an instance.

8. What is eminent domain?

9. Mrs. Sue Jones, the wife of Mr. John Jones, is injured physically by the negligence of Mr. Henry Smith.

In whose name should suit be brought for the injury, and to whom should the recovery be paid?

10. Young Mr. Jones, their son, a youth of 15, is injured at the same time from the same cause.

In whose name should suit be brought for his injury, and to whom should the recovery be paid?

11. On the death of the wife, intestate, what interest, if any, does the husband take in her personal estate?

12. A Richmond man writes to an insurance company in New York to insure his house in Richmond, specifying the details. The company mails the policy, (drawn according to his directions and executed) in New York at 8 P. M. That night at 10 P. M. the house burns. The owner receives the policy the next morning at 10 A. M.

Is the company liable on its policy? Why?

13. A company manufacturing fire-arms agrees to pay the purchasing agent of a foreign government a handsome commission on all orders placed with them by him. After the orders are placed and the arms delivered and paid for, the company refuses to pay his commissions.

Can he make it pay them to him? Why?

14. A party in selling out a business to a competitor agrees not to enter into the same business again at his home for 10 years.

Is the agreement enforceable? Why?

15. A race-horse, valued by its owner at $1,000, is shipped over a railroad, and the owner accepts from the carrier a bill of lading valuing the horse at $100, assessing the charge for transportation on that basis and limiting the recovery to that amount. The horse is killed by the negligence of the carrier.

(1) What is the current of authority as to the validity of such a stipulation?

(2) Is Virginia in accord with the current of authority or not?

16. A traveler on a free pass is injured by the negligence of the carrier.

(1) What is the current of authority as to his right of action?

(2) Is Virginia in accord with the current of authority or not?

17. An individual sells and conveys real estate to a corporation not authorized by its charter to hold real estate, and receives the purchase price. He subsequently sells and conveys the same property to another grantee.

As among themselves, who has the best title? Why?

18. Independent of any statute forbidding it, can a private business corporation, when insolvent, make preferences as among its creditors?

19. A person is killed in West Virginia by the negligence of a Virginia corporation. Both West Virginia and Virginia have statutes on the subject.

Can suit be maintained in Virginia? If so, which statute governs?

20. A passenger on a ferry boat, in this State, is injured in a

collision between it and another boat, due to the negligence of both boats.

Does the fact that the boat on which he is travelling is negligent affect his right to proceed against the other boat? Why?

21. At what age is a child presumed to be capable of contributory negligence, and at what age not?

22. A has B arrested on a criminal charge, and, taken before a magistrate, who, after holding a preliminary examination, requires bond for his good behavior. This action of the justice is reversed on appeal.

What effect will the action of the justice have on the question of probable cause in a suit for malicious prosecution?

23. Give any four maxims governing equitable relief.

24. How far does a statute of limitations affect an equity court?

25. When will equity refuse to conform a judicial sale for inadequacy of price?

26. A party compromises a debt at a ruinous discount, under the impression that it is barred by the three year statute of limitations. He afterwards finds that the case is governed by the five year statute and is not barred. He files a bill to rescind the compromise on the ground of mistake.

Will the bill lie? Why?

27. A makes B a deed to Blackacre and delivers it, B paying the price in full. B loses the deed and A refuses to execute another.

What can B do, if anything?

28. A sues B for injuries caused by the latter's negligence, averring B's negligence sufficiently, but omitting to aver that he himself was not negligent.

Is his declaration demurrable? Why?

29. On demurrer to evidence is a bill of exceptions necessary in order to get into the record the evidence? Why?

30. To suit by A, B pleads a special plea of equitable set-off. A wishes to defeat the set-off by showing that it is barred by the statute of limitations.

How does he raise this issue on the pleadings?

31. An hour after a railroad accident, some of the train hands are heard to remark that it was due to a badly kept road-bed.

Can their statements be proved as evidence against the company on the question of negligence? Why?

32. On whom is the burden of proof in an action by a servant against a master for personal injuries alleged to arise from negligence of the defendants?

33. In a suit against a company charging that its engine negligently started a fire on plaintiff's property, proof is offered that on various occasions before the same engine had started fires in the same neighborhood.

Is the evidence admissible if objected to? Why?

34. An insurance policy provides that it shall be governed by the laws of the State of Ohio. Suit is brought on it in a Virginia court.

How, if at all, should the Ohio law be brought to the attention of the court?

35. Define treason against the United States, and state the degree of proof necessary to convict.

36. A counterfeit national bank note is knowingly put into circulation by an individual.

Is the act a crime against the State or the United States?

37. In a criminal prosecution the Commonwealth neglects to prove that the crime occurred in the county laid in the indictment. The accused is convicted and takes case to Court of Appeals on refusal of lower court to set aside verdict as contrary to law and evidence.

On whom was burden to prove locality, and what will be result of appeal?

38. What acts of Parliament are preserved and kept in force by the Code?

39. When does an act of Assembly take effect?

40. How many compose the State Corporation Commission, how are they appointed, and what are their terms of office?

Successful Applicants.

Following is a list of the successful applicants for license to practice law in Virginia:

Abbott, Fred C.....Norfolk, Va.
Dodd, William Reese.....Lexington, Va.
Dunn, Crucie Overton.....Lexington, Va.
Edwards, Albert N.....Norfolk, Va.
Elliott, Gilmer T.....Norfolk, Va.
Foster, Walter Chapin.....Alexandria, Va.
Harman, John Newton, Jr.....Lexington, Va.
Hockett, John Cornelius.....Bristol, Va.
Metzger, W. A.....Leesburg, Va.
Ricks, Richard Arnold, Jr.....Richmond, Va.
Sacks, Herman Abraham.....Lexington, Va.
Schlossberg, Nathan William.....Lexington, Va.
Scott, Charles Cosby.....Lexington, Va.
Scott, Luther Gilham.....Lexington, Va.
Wallace, Maxwell G.....Richmond, Va.

Workmen's Compensation Act in New York.—On October 1st there came into force in New York the Wainwright-Phillips Workmen's Compensation Act, passed at the last session of the Legislature, which will alter materially the entire relation of employer and employe with regard to accidents and the compensation for them. It is based on the principle that the burden for industrial accidents not due to the willful misconduct of the employe ought to be cast on the industry instead of, as now happens in the majority of cases, on the man injured or his family.

The changes fall into two classes. The first amends the general employers' liability law so as to give the employe certain advantages. The second provides a scale of compensation, optional in all trades but mandatory in certain occupations, which includes a large number of building operations, the construction and operation of electric appliances, work in which high explosives are used, railroads of all kinds, tunnel construction, and other work carried on under compressed air. In the application of this scale of compensation the question of the contributory negligence of the workman may not be raised.

Some doubt has been expressed as to the constitutionality of these mandatory provisions, on the ground that they constitute the taking of property without due process of law. To this the supporters of the new measure reply that these obligatory clauses are merely an exercise of the police power of the State. It is, however, recognized that the constitutional point will probably have to be taken to the highest courts for final settlement.

The first change of importance in the general employers' liability law broadens the responsibility of the employer for accidents resulting from the condition of his ways, works, and machinery to include his plant. Moreover, if an employer lets out his work to a contractor or the contractor sublets part of his job to a subcontractor the original employer can no longer shirk the responsibility of an accident occurring through a defect in the ways, works, machinery, or plant that he has supplied, provided that the defect was not detected or remedied or arose through his negligence.

As things are to-day an employer is liable for the negligence of any person in his service, whose "sole or principal duty is that of superintendence" or in the absence of the regular Superintendent is acting in his place with the assent of the employer, This is now broadened. The employer must in future stand for the negligence of any persons intrusted not only with superintendence, but also "with authority to direct, control, or command any employe in the performance of the duty of such employe."

Again a defense to a claim for compensation that has worked great hardship to workmen has been the provision that if they understood that their work necessarily involved risk the fact that they

continued at it implied that they assumed all these consequences. This has already been modified by the existing law, but the Wainwright-Phillips act has abolished it altogether.

It lays down that in case of a personal injury "for which the employer would be liable but for the hitherto available defense of assumption of risk by the employe, the fact that the employe continued in the service of the employer in the same place and course of employment after the discovery by such employe or after he had been informed of the danger of personal injury therefrom shall not be as matter of fact or as matter of law an assumption of the risk of injury therefrom."

The employe so far always has been obliged to prove that there was no contributory negligence on his part. It is still provided that this should be a valid defense to a claim, but it is distinctly laid down that in future the burden of proof of contributory negligence lies with the employer.

The mandatory clauses in the Phillips act, about which the question of constitutionality is likely to be raised, apply to eight classes of industry. They are:

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel framework.

2. The operation of elevators, elevating machines, or derricks, or hoisting apparatus used within or on the outside of any bridge or building for the conveying of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated twenty feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration, or repair of buildings, bridges, or structures.

4. Construction, operation, alteration, or repair of wires, cables switchboards, or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder blasting powder, dynamite, or any other explosives where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines trains, motors, or cars propelled by gravity or steam, electricity, or other mechanical power, or the construction or repair of steam railroad tracks and roadbeds over which such locomotives, engines, trains, motors, or cars are operated.

7. The construction of tunnels and subways.

8. All work carried on under compressed air.

The new law recognizes them as "especially dangerous," and states that "extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary, or substantially unavoidable." Consequently it provides this schedule of compensation:

In case of death four years' wages, not to exceed $3,000.

In case of total incapacity for a period not to exceed eight years, 50 per cent. of the workman's average weekly earnings.

In case of partial disability for a period not to exceed eight years, 50 per cent. of the difference between his average weekly earnings before and after the accident.

While the employer is bound to pay this rate of compensation in these "especially dangerous" trades and cannot plead the contributory negligence of the workman in his defense, the employe is not obliged to accept it. He may waive his rights under the mandatory clauses and sue the employer under the general employers' liability act, but once he has decided to go to law he cannot demand the statutory scale of compensation.

The same scale of compensation with regard to the question of negligence may be applied to other than the "especially dangerous" occupations by the mutual consent of the employer and the employee. If this agreement is entered into the employee waives all his future rights under the liability act, and is limited to the compensation laid down in the schedule, unless there has been serious or wilful misconduct on the part of the employer. In the same way the employer cannot escape paying the fixed rate of compensation, unless he can show serious and wilful misconduct on the part of the employee.

If the employer drops behind in his payments he is liable at once for an action on contract, and the judgment given against him will be for the payment in one lump sum of the payments then due and prospectively due under the plan.

The shyster lawyer who has been making his living by taking up workmen's compensation claims for contingent fees, generally amounting to one half the amount recovered, will come off badly under the new act. It is ordained that their contingent interests in recoveries under the compensation features of the statutes are not to be enforceable liens on the fund recovered unless approved by a judge.

These amendments to the law are the result of a study of the problem of workmen's compensation, which was undertaken by a commission of the Legislature. Similar studies are being made by the Federal Government and other States, and the National Association of Manufacturers have sent some of its members abroad to investigate, not only the methods used for holding the balance between employer and employee but also the devices now in use for the prevention of accidents.

In a summary of the new law published in the current number of The Lawyers' Magazine by Assemblyman Cyrus W. Phillips, the author of the law, it is not contended that it is a final solution of the problem, but merely the inauguration by the State of a new policy, which will lead eventually to its satisfactory settlement.—New York Times.

Liability Rates.—The accident insurance companies are waking up. They see in the Workmen's Compensation Acts, to become effective Sept. 1, chances to raise their rates because of the employers' increased liability for damages imposed by the acts. But if the new laws effect the purpose of their framers, the rates will eventually go lower than ever.

The acts practically do away with the defense that workmen assume the risk of their occupations, and they transfer to the employer the burden of proof that the hurt employee was negligent. They make the employer liable for accidents caused by "bosses" and superintendents. The effect of these shiftings of responsibility to the employer is already observable in the dangerous trades, in stimulating to increased watchfulness against accidents, in the systematic training of men to guard against them, and to resort to better safety appliances. Such measures diminish insurance "risks."

The expense of litigaton is diminished. The trials will be speedier. The Wainwright Commission found that for every $100 paid out by employers in premiums for liability insurance $63 goes to pay salaries of attorneys and claim agents, derived chiefly from protracted litigation. This abuse was increased by the "ambulance-chasing" lawyers who promote lawsuits against employers on ridiculous claims, for the sake of the exorbitant fees they extort. All this fraudulent litigation and expense is swept away in the law's decree that attorneys' bills in employees' personal injury cases must be submitted to the approval of the Supreme Court Judge. And the clear definitions of responsibility will inevitably shorten trials and engage the lawyers less. Great saving can be made in legal fees, which will cheapen the cost of insurance against a lessening number of accidents.

But the law's provision of optional agreements for damages between workmen and their employers, excepting in eight trades, on a specified basis not exceeding $3,000, may operate efficiently to lower the insurance rates. They are now placed high, largely because of the uncertainty of jury verdicts. The legal form of agreement grades the damages according to the seriousness of the injury and the question whether the employee has a dependent family. It offers a certainty of sufficient damages to protect the employee and his family; usually he would prefer signing it to take the chances of winning or losing a suit at common law. The agreement reduces to order and gradation settlements that have hitherto been extremely uncertain to both sides. This surely will not tend to increase rates of insurance.

Such are the hoped-for results of the employers' liability amendments. But they will be preceded by the immediate raising of insurance rates.—New York Times.

Petition for Rehearing.—In the following case, petition for rehearing is pending: Pollard *v.* American Stone Co. (Va.), 68 S. E. 266.

In the following cases, petitions for rehearings have been granted: Beury *v.* Davis (Va.). Opinion filed Mar. 10, 1910. Granted June 9, 1910; Hecksher *v.* Blanton (Va.). Opinion filed Mar. 12, 1910. Granted June 9, 1910.

IN VACATION.

Proof of Sex.—Proof that one is more than forty years old, has been twice married, and is a grandmother is held in Johnson *v.* State, 128 S. W. 614, to sufficiently establish her sex. At least it established a fair presumption.—West Publishing Company's Docket

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What the Judge Meant.—Against an old Georgia negro, charged with stealing a pig, the evidence was absolutely conclusive, and the judge, who knew the old darkey well, said, reproachfully:

"Now, uncle, why did you steal that pig?"

"Bekase mah pooh family wuz starvin', yo' honoh," whimpered the old man.

"Family starving!" cried the judge. "But they told me you keep five dogs. How is that, uncle?"

"Why, yo' honor," said uncle, reprovingly, "you wouldn't 'spect mah family to eat dem dogs."—Central Law Journal.